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JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 716

R. E. PECKHAM, Assignee and Trustee,
Petitioner,

vs.

JOSE E. CASALDUC, Trustee of Ronrico Corporation in Reorganization, et al.,
Respondents

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

to the United States Court of Appeals for the First Circuit.

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Hammond, Indiana;
Attorney for Petitioner.

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to the United States Court of Appeals for the First Circuit.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The above named Petitioner respectfully petitions that this Court may reconsider and grant his Petition for Writ of Certiorari herein, and shows:

The Factual Background

On April 6, 1959, this Court entered an order, without further explanation, denying his Petition for Writ of Certiorari. This Petition for Rehearing thereof is filed on the 25th day thereafter.

The factual situation is simple:

The United States District Court for Puerto Rico entered orders approving and confirming a Chapter X reorganization plan for *Ronrico Corporation*, a long-time important factor in the rum producing and distributing business of Puerto Rico and of the United States.

Petitioner, in the role of an asserted $2,000,000 equitable lien holder upon the capital stock of said Ronrico Corporation, who thereby had a *property right* in the stock, appealed from said approving and confirming orders to the United States Court of Appeals for the First Circuit, complaining in his appeal that:

The amended plan substituted $244,000 of *cash* in place of the *stock* which was subject to his lien and was allegedly worth $1,000,000. The amended plan thereby reduced the *subject matter* of his lien by $750,000 and prejudiced his *property* rights in the stock.

The District Court, by orders and opinion, overruled *on the merits* the aforesaid objections which petitioner filed to the amended plan.

Petitioner appealed therefrom to the Court of Appeals. He was the only appellant. The other parties in the District Court allegedly were in *collusion* to promote the amended plan.

One of the appellees-respondents, Puerto Rico Distilling Company, filed a motion in the Court of Appeals to *dismiss* the appeal on the ground that this appellant-petitioner "*had no right to be heard*" on appeal,—though the District Court had heard his objections on the *merits* and had entered an order and opinion against him on the merits. (Petition for certiorari, pp. 9, 4a-12a).

The Court of Appeals *dismissed* the appeal on this

ground. (Opinion, appended to Petition for Writ of Certiorari, pp. 14a-16a).

From this dismissal of his appeal, the appellant-petitioner filed his Petition for Writ of Certiorari,—seeking not this Court's review of the merits of his appeal, but its writ of certiorari to require the Court of Appeals to entertain and decide the merits of his appeal. (Petition for Certiorari, p. 2).

Questions Not Previously Presented.

Petitioner respectfully urges that the following grounds are of controlling importance and sufficient to warrant certiorari, *in addition* to grounds I and II of the Petition for Writ of Certiorari (pp. 9-10):

III.

Certiorari is more freely granted, and should be granted here, to require a Court of Appeals to exercise its appellate jurisdiction to review the merits of an appeal which it has erroneously refused to exercise.

Reason for petitioner's previous failure to present this ground: The Petition for Writ of Certiorari *assumed* the above underlying premise without expressly stating it (pp. 9-10), because:

(1) Petitioner believed the Court would judicially notice the proposition. But he now believes that the Court may have overlooked its full import, and may have viewed this case as just another routine Chapter X reorganization appeal.

(2) A further cause of petitioner's failure to specify this proposition was that he was compelled to prepare the petition under much pressure for time,—trying a jury case by day and preparing the petition by night.

IV.

Petitioner seeks *appellate review of his charge* that the so-called "Amended Plan of Reorganization" of Ronrico Corporation, approved and confirmed by the United States District Court for Puerto Rico, was not only illegal but was illegal for an extraordinary and serious reason:

It was designed and operates as one essential part of a scheme by the Canadian parent corporation, Distillers-Seagrams Ltd., and its American subsidiaries, to monopolize the rum producing and distributing business in violation of the anti-monopoly laws of both Puerto Rico and the United States.

Petition for Writ of Certiorari, p. 5 top.
"Appellees' Record Appendix," pp. A69 to A73.

Therefore, there is *inherent* in this case a situation of *governmental and public importance* in addition to, and exceeding, the private rights of the petitioner.

Unless reviewed and remedied by the Court of Appeals, the District Court's approval and confirmation of this amended plan **will stand as a judicial sanction of this alleged monopolistic scheme and its consummation.**

This not only prejudices and destroys petitioner's property rights which he seeks to protect by the appeal, but it may prejudice in several ways the existing and future rights and remedies of governmental agencies against this essential part of this monopoly. It should be remembered that by the terms of Chapter X, the Government is not an idle bystander as in ordinary litigation, but is a potentially interested party. Several of its agencies (Securities and Exchange Commission, Treasurer of United States, and perhaps others) were required to and did receive notice of

the commencement of the proceeding, the proposed amended plan and the hearings on its approval and confirmation.

It presently is unnecessary to determine whether, and to what extent the governmental agencies are precluded or prejudiced by the aforesaid order of the District Court *ratifying* the aforesaid monopolistic scheme, and the Court of Appeals' indirect ratification thereof by its order dismissing petitioner's appeal therefrom.

It suffices presently for this Court to see that Court of Appeals probably has erroneously refused to exercise its appellate jurisdiction on a matter which not only prejudices the petitioner's private property rights, but which also may preclude or prejudice the rights and remedies of the Department of Justice's Anti-Trust Division relative to the charges by the appellant involved in his appeal to the Court of Appeals and in his Petition for Writ of Certiorari herein.

Reason for petitioner's previous failure to present this ground: This ground was set forth in petitioner's objections to the amended plan in the District Court, and in his appeal to the Court of Appeals, and in his "Statement of the Case" in his Petition for Writ of Certiorari in this Court. (p. 5 top). Likewise, it was covered from an abstract legal standpoint in the argument of his Petition. (p. 21). Failure to specify it in more detail as a ground was caused by the same reasons set forth under III, supra.

WHEREFORE, for each of the aforesaid reasons, the Petitioner respectfully prays that the Court may rehear and reconsider his Petition for Writ of Certiorari herein, and may thereupon grant said Petition; and he prays for all further just and proper relief herein.

JAY E. DARLINGTON,
Attorney for Petitioner.

I certify that the foregoing Petition for Rehearing is filed in good faith, and not for delay, for the purpose of presenting additional grounds believed by me to warrant the granting of the preceding Petition for Writ of Certiorari herein, then available to the petitioner but not presented in said Petition, for the reasons above herein set forth.

JAY E. DARLINGTON,
Attorney for Petitioner.

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